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FROM THE DEPARTMENT OF STATE.

Mr. Fox to Mr. Webster.

WASHINGTON, MARCH 12, 1841.

The undersigned, Her Britannic Majesty's Extraordinary and Minister Plenipotentiary, is instructed by his Government to the following official communication to the Government of the United States.

Her Majesty's Government have had under their consideration the correspondence which took place at Washington in December, between the United States Secretary of State, Mr. Forsyth, and the undersigned, comprising two official letters from the undersigned to Mr. Forsyth, dated the 13th and 29th of December, and two official from Mr. Forsyth to the undersigned, dated the 29th and 30th of the same month, upon the subject of the arrest and imprisonment of Mr. Alexander McLeod, of Upper Canada, by the authorities of the State of New York, on a pretended charge of arson and murder, having been engaged in the capture and destruction of the steamboat "Caroline" on the 29th of December, 1837.

The undersigned is directed in the first to make known to the Government of the United States that Her Majesty's Government entirely approve of the course pursued by the undersigned in that correspondence, and of the language adopted by him in the official letters above mentioned.

The undersigned is now instructed to demand from the Government of the United States, formally, in the name of Her Majesty's Government, the immediate release of Mr. Alexander McLeod.

The grounds upon which the British Government make this demand upon the Government of the United States are these: That the transaction on account of which Mr. McLeod has been arrested and is to be put upon his trial was a transaction of a public character, planned and executed by persons empowered by Her Majesty's Colonial authorities to take any steps and to do any which might be necessary for the defence of Her Majesty's territories, and for the protection of Her Majesty's subjects; that consequently those subjects of Her Majesty who engaged in that transaction were performing an act of public duty for which they cannot be made personally and individually answerable to the laws and tribunals of any foreign country.

The transaction in question may have been, as Her Majesty's Government are of opinion that it was, a justifiable employment of force for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, having been permitted to arm and organize themselves within the territory of the United States, had actually invaded and occupied a portion of the territory of Her Majesty, or it may have been, as alleged by Mr. Forsyth in his note to the undersigned of the 30th of December, "a most unjustifiable invasion in time of peace of the territory of the United States." But this is a question of a political and international character, which can be discussed and settled only between the two Governments, and which courts of justice of the State of New York cannot by possibility have any means of judging or any right of deciding.

It would be contrary to the universal practice of civilized nations to fix individual responsibility upon persons who, with the sanction or by the orders of the constituted authorities of a State, engaged in military or enterprising in their country's cause: it is obvious that the introduction of such principles would aggravate beyond measure the demoralizing effects of war, by mixing national passions, and the cruelty and bitterness of individual revenge.

Her Majesty's Government cannot believe that the Government of the United States really intend to set an example so fraught with peril to the community of nations, and a direct tendency of which must be to throw back into the practice of modern war those principles which civilization and Christianity have long since banished.

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With the particulars of the internal compact which may exist between the several States that compose the Union, foreign Powers have nothing to do: the relations of foreign Powers are with the aggregate Union; that Union is to them represented by the Federal Government; and of that Union the Federal Government is to them the only organ. Therefore, when a foreign Power has redress to demand for a wrong done to it by any State of the Union, it is to the Federal Government, and not to the separate State, that such Power must look for redress for that wrong. And such foreign Power cannot admit the plea that the separate State is an independent body over which the Federal Government has no control. It is obvious that such a doctrine, if admitted, would at once go to the dissolution of the Union as far as its relations with foreign Powers are concerned; and that foreign Powers, in such case, instead of accrediting diplomatic agents to the Federal Government, would send such agents, not to that Government, but to the Government of each separate State; and would make their relations of peace and war with each State depend upon the result of their separate intercourse with such State, without reference to the relations they might have with the rest.

Her Majesty's Government apprehend that the above is not the conclusion at which the Government of the United States intend to arrive; yet such is the conclusion to which the arguments that have been advanced by Mr. Forsyth necessarily lead.

But be that as it may, Her Majesty's Government formally demand, upon the grounds already stated, the immediate release of Mr. McLeod; and Her Majesty's Government entreat the President of the United States to take into his most deliberate consideration the serious nature of the consequences which must ensue from a rejection of this demand.

The United States Government will perceive that, in demanding Mr. McLeod's release, Her Majesty's Government argue upon the assumption that he was one of the persons engaged in the capture of the steamboat "Caroline"; but Her Majesty's Government have the strongest reasons for being convinced that Mr. McLeod was not in fact engaged in that transaction; and the undersigned is hereupon instructed to say that although the circumstance itself makes no difference in the political and international question at issue; and although Her Majesty's Government do not demand Mr. McLeod's release upon the ground that he was not concerned in the capture of the "Caroline," but upon the ground that the capture of the "Caroline" was a transaction of a public character for which the persons engaged in it cannot incur private and personal responsibility; yet the Government of the United States must not disguise from themselves that the fact that Mr. McLeod was not engaged in the transaction must necessarily tend greatly to inflame that national resentment which any harm that shall be suffered by Mr. McLeod at the hands of the authorities of the State of New York will infallibly excite throughout the whole of the British Empire.

The undersigned, in addressing the present official communication, by order of his Government, to Mr. WEBSTER, Secretary of State of the United States, has the honor to offer to him the assurance of his distinguished consideration.

H. S. FOX.

The Hon. DANIEL WEBSTER, &c. &c. &c.

Mr. Webster to Mr. Fox.

DEPARTMENT OF STATE,

Washington, April 34, 1841.

The undersigned, Secretary of State of the United States, has the honor to inform Mr. Fox, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty, that his note of the 12th of March was received and laid before the President.

Circumstances, well known to Mr. Fox, have necessarily delayed, for some days, the consideration of that note.

The undersigned has the honor now to say that it has been fully considered, and that he has been directed by the President to address to Mr. Fox the following reply:

Mr. Fox informs the Government of the United States that he is instructed to make known to it that the Government of Her Majesty entirely approve the course pursued by him in his correspondence with Mr. Forsyth in December last, and the language adopted by him on that occasion; and that that Government have instructed him "again to demand from the Government of the United States, formally, in the name of the British Government, the immediate release of Mr. Alexander McLeod," that "the grounds upon which the British Government make this demand upon the Government of the United States are these: That the transaction on account of which Mr. McLeod has been arrested and is to be put upon his trial was a transaction of a public character, planned and executed by persons duly empowered by Her Majesty's colonial authorities to take any steps or do any acts which might be necessary for the defence of Her Majesty's territories, and for the protection

of Her Majesty's subjects, and that consequently those subjects of Her Majesty who engaged in that transaction were performing an act of public duty, for which they cannot be made personally and individually answerable to the laws and tribunals of any foreign country."

The President is not certain that he understands precisely the meaning intended by Her Majesty's Government to be conveyed by the foregoing instruction.

This doubt has occasioned with the President some hesitation, but he inclines to take it for granted that the main purpose of the instruction was to cause it to be signified to the Government of the United States that the attack on the steamboat "Caroline" was an act of public force, done by the British colonial authorities, and fully recognised by the Queen's Government at home, and that consequently no individual concerned in that transaction can, according to the just principles of the laws of nations, be held personally answerable in the ordinary courts of law as for a private offence; and that upon this avowal of Her Majesty's Government, Alexander McLeod, now imprisoned on an indictment of murder alleged to have been committed in that attack, ought to be released by such proceedings as are usual and are suitable to the case.

The President adopts the conclusion that nothing more than this could have been intended to be expressed, from the consideration that Her Majesty's Government must be fully aware that in the United States, as in England, persons confined under judicial process can be released from that confinement only by judicial process. In neither country, as the undersigned supposes, can the arm of the Executive power interfere, directly or forcibly to release or deliver the prisoner. His discharge must be sought in a manner conformable to the principles of law and the proceedings of courts of judicature. If an indictment, like that which has been found against Alex. McLeod, and under circumstances like those which belong to his case, were pending against an individual in one of the courts of England, there is no doubt that the law officer of the Crown might enter a *nolle prosequi*, or that the prisoner might cause himself to be brought up on *habeas corpus* and discharged, if his ground of discharge should be adjudged sufficient, or that he might prove the same facts, and insist on the same defence or exemption on his trial.

All these are legal modes of proceeding, well known to the laws and practice of both countries. But the undersigned does not suppose that, if such a case were to arise in England, the power of the Executive Government could be exerted in any direct manner. Even in the case of Ambassadors and other public Ministers, whose right to exemption from arrest is personal, requiring no fact to be ascertained but the mere fact of diplomatic character, and to arrest whom is sometimes made a highly penal offence, if the arrest be actually made, it must be discharged by application to the courts of law.

It is understood that Alexander McLeod is held as well on civil as on criminal process for acts alleged to have been done by him in the attack on the "Caroline," and his defence or ground of acquittal must be the same in both cases. And this strongly illustrates, as the undersigned conceives, the propriety of the foregoing observations; since it is quite clear that the Executive Government cannot interfere to arrest a civil suit between private parties in any stage of its progress, but that such suit must go on to its regular judicial termination. If, therefore, any course different from such as have been now mentioned was in contemplation of Her Majesty's Government, something would seem to have been expected from the Government of the United States as little conformable to the laws and usages of the English Government as to those of the United States, and to which this Government cannot accede.

The Government of the United States, therefore, acting upon the presumption which it already adopted, that nothing extraordinary or unusual was expected or requested of it, decided, on the reception of Mr. Fox's note, to take such measures as the occasion and its own duty appeared to require.

In his note to Mr. Fox of the 26th of December last, Mr. FORSYTH, the Secretary of State of the United States, observes, that "if the destruction of the 'Caroline' was a public act of persons in her Majesty's service, obeying the order of their superior authorities, this fact has not been before communicated to the Government of the United States by a person authorized to make the admission; and it will be for the court which has taken cognizance of the offence with which Mr. McLeod is charged, to decide upon its validity when legally established before it;" and adds, "The President deems this to be a proper occasion to remind the Government of Her Britannic Majesty that the case of the 'Caroline' has been long since brought to the attention of Her Majesty's principal Secretary of State for Foreign Affairs, who, up to this day, has not communicated its decision thereupon. It is hoped that the Govern-

ment of Her Majesty will perceive the importance of no longer leaving the Government of the United States uninformed of its views and intentions upon a subject which has naturally produced much exasperation, and which has led to such grave consequences."

The communication of the fact that the destruction of the "Caroline" was an act of public force by the British authorities being formally made to the Government of the United States by Mr. Fox's note, the case assumes a decided aspect.

The Government of the United States entertains no doubt that, after this avowal of the transaction as a public transaction, authorized and undertaken by the British authorities, individuals concerned in it ought not, by the principles of public law and the general usage of civilized States, to be held personally responsible in the ordinary tribunals of law for their participation in it. And the President presumes that it can hardly be necessary to say that the American People, not distrustful of their ability to redress public wrongs by public means, cannot desire the punishment of individuals when the act complained of is declared to have been an act of the Government itself.

Soon after the date of Mr. Fox's note, an instruction was given to the Attorney General of the United States from this Department, by direction of the President, which fully sets forth the opinions of this Government on the subject of Mr. McLeod's imprisonment, a copy of which instruction the undersigned has the honor herewith to enclose.

The indictment against McLeod is pending in a State court; but his rights, whatever they may be, are no less safe, it is to be presumed, than if he were held to answer in one of the courts of this Government.

He demands immunity from personal responsibility by virtue of the law of nations, and that law, in civilized States, is to be respected in all courts. None is either so high or so low as to escape from its authority in cases to which its rules and principles apply.

This Department has been regularly informed, by his excellency the Governor of the State of New York, that the Chief Justice of that State was assigned to preside at the hearing and trial of McLeod's case, but that, owing to some error or mistake in the process of summoning the jury, the hearing was necessarily deferred.

The President regrets this occurrence, as he has a desire for the speedy disposition of the subject. The counsel for McLeod have requested authentic evidence of the avowal by the British Government of the attack on, and destruction of the "Caroline," as acts done under its authority, and such evidence will be furnished to them by this Department.

It is understood that the indictment has been removed into the Supreme Court of the State by the proper proceeding for that purpose, and that it is now competent for McLeod, by the ordinary process of *habeas corpus*, to bring his case for hearing before that tribunal.

The undersigned hardly needs to assure Mr. Fox that a tribunal so eminently distinguished for ability and learning as the Supreme Court of the State of New York may be safely relied upon for the just and impartial administration of the law in this as well as in other cases; and the undersigned repeats the expression of the desire of this Government that no delay may be suffered to take place in these proceedings which can be avoided. Of this desire, Mr. Fox will see evidence in the instructions above referred to.

The undersigned has now to signify to Mr. Fox that the Government of the United States has not changed the opinion which it has heretofore expressed to the Queen's Government of the character of the act of destroying the "Caroline."

It does not think that the transaction can be justified by any reasonable application or construction of the right of self-defence, under the laws of nations. It is admitted that a just right of self-defence attaches always to nations, as well as to individuals, and is equally necessary for the preservation of both. But the extent of this right is a question to be judged of by the circumstances of each particular case; and when its alleged exercise has led to the commission of hostile acts within the territory of a Power at peace, nothing less than a clear and absolute necessity can afford ground of justification. Not having, up to this time, been made acquainted with the views and reasons, at length, which have led Her Majesty's Government to think the destruction of the "Caroline" justifiable as an act of self-defence, the undersigned, earnestly renewing the remonstrance of this Government against the transaction, abstains, for the present, from any extended discussion of the question. But it is deemed proper, nevertheless, not to omit to take some notice of the general grounds of justification stated by Her Majesty's Government in their instruction to Mr. Fox.

The Queen's Government have instructed Mr. Fox to say that they are of opinion that the transaction which terminated in the destruction of the Caroline was a justifiable employment of force, for the purpose of defending the British territory from the unprovoked attack of a band of British rebels and American pirates, who, having been "permitted" to arm and organize themselves within the territory of the United States, had actually invaded a portion of the territory of Her Majesty.

The President cannot suppose that the British Government, by the use of these terms, meant to be understood as intimating that those acts, violating the laws of the United States, and disturbing the peace of British territories, were done under any degree of countenance from this Government, or were regarded by it with indifference; or that, under the circumstances of the case, they could have been prevented by the ordinary course of proceeding. Although he regrets that, by using the term "permitted," a possible inference of that kind might be raised, yet such an inference, the President is willing to believe, would be quite unjust to the intentions of the British Government.

That on a line of frontier such as separate the United States from Her Britannic Majesty's North American Province—a line long enough to divide the whole of Europe into halves—irregularities, violence, and conflicts should sometimes occur, equally against the will of both Governments, is certainly easily to be supposed. This may be more possible, perhaps, in regard to the United States, without any reproach to their Government, since their institutions entirely discourage the keeping up of large standing armies in time of peace, and their situation happily exempts them from the necessity of maintaining such expensive and dangerous establishments. All that can be expected from either Government in these cases is good faith, a sincere desire to preserve peace and do justice, the use of all proper means of prevention, and that, if offences cannot, nevertheless, be always prevented, the offenders shall still be justly punished. In all these respects, this Government acknowledges no delinquency in the performance of its duties.

Her Majesty's Government are pleased, also, to speak of those American citizens who took part with persons in Canada, engaged in an insurrection against the British Government, as "American pirates." The undersigned does not admit the propriety or justice of this designation. If citizens of the United States fitted out, or were engaged in fitting out, a military expedition from the United States intended to act against the British Government in Canada, they were clearly violating the laws of their country, and exposing themselves to the just consequences which might be inflicted on them if taken within the British dominions. But, notwithstanding this, they were, certainly, not pirates, nor does the undersigned think that it can advance the purpose of fair and friendly discussion, or hasten the accommodation of national difficulties, so to denominate them. Their offence, whatever it was, had no analogy to cases of piracy. Supposing all that is alleged against them to be true, they were taking a part in what they regarded as a civil war, and they were taking a part on the side of the rebels. Surely, England herself has not regarded persons thus engaged as deserving the appellation which the Queen's Government bestows on these citizens of the United States.

It is quite notorious that, for the greater part of the last two centuries, the subjects of British Crown have been permitted to engage in foreign wars, both national and civil, and in the latter, in every stage of their progress; and yet it has not been imagined that England has at any time allowed her subjects to turn pirates. Indeed, in our own times, not only have individual subjects of that Crown gone abroad to engage in civil wars, but we have seen whole regiments openly recruited; embodied, armed, and disciplined in England, with the avowed purpose of aiding a rebellion against a nation with which England was at peace; although it is true that, subsequently, an act of Parliament was passed to prevent transactions so nearly approaching to public war, without license from the Crown.

It may be said that there is a difference between the case of a civil war, arising from a disputed succession, or a protracted revolt of a colony against the mother country, and the case of a fresh outbreak at the commencement of a rebellion. The undersigned does not deny that such distinction may, for certain purposes, be deemed well founded. He admits that a Government, called upon to consider its own rights, interests, and duties, when civil wars break out in other countries, may decide on all the circumstances of the particular case, upon its own existing stipulations, on probable results, on what its own security requires, and on many other considerations. It may be already bound to assist one party, or it may become bound, if it so chooses, to assist the other, and to meet the consequences of such assistance.

But whether the revolt be recent or long continued, they who join those concerned in it, whatever may be their offence against